



KENNEDALE ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS AGENDA

REGULAR MEETING | MARCH 26, 2024 AT 6:00 PM
CITY COUNCIL CHAMBERS | 405 MUNICIPAL DRIVE , KENNEDALE, TX 76060

I. CALL TO ORDER

To address the Kennedale Economic Development Corporation Board of Directors regarding an agenda item, submit a 'Request to Speak' form before the meeting begins. Speakers are allotted three (3) minutes, must limit their comments to the subject indicated on the form, and should address the Kennedale Economic Development Corporation Board of Directors as a whole, rather than individual members or staff. Pursuant to Texas Government Code §551.071, the Kennedale Economic Development Corporation Board of Directors reserves the right to adjourn into Executive (Closed) Session at any time during the meeting to seek legal advice from the City Attorney on any item posted on the agenda.

A. ROLL CALL

II. WORK SESSION

A. WORK SESSION REPORTS

1. Chamber of Commerce construction
2. Point-of-sale contractor presentation
3. Kennedale TownCenter update

B. DISCUSSION AND/OR REQUESTS FOR CLARIFICATION OF ITEMS LISTED ON THE AGENDA

III. REGULAR SESSION

A. REPORTS AND ANNOUNCEMENTS

In addition to any items below, the Kennedale Economic Development Corporation Board of Directors, the presiding officer, and/or staff may give or receive reports regarding items of community interest, including, but not limited to, recognition of officials, citizens, staff, or departments; information regarding holiday schedules; and upcoming or attended events.

1. Financial reports for the EDC

B. CONSENT AGENDA

1. Approval of the minutes from the February 27, 2024 Regular Meeting

C. ITEMS FOR INDIVIDUAL CONSIDERATION

1. Consider approval of the MMA proposal for professional services for the TownCenter Park Master Plan

IV. EXECUTIVE SESSION

The Kennedale Economic Development Corporation Board of Directors reserves the right to meet in Executive (Closed) Session at any time during the meeting pursuant to the below cited sections of the Texas Government Code:

- A. **PURSUANT TO §551.071** — *Consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion of any item posted on the agenda, legal issues regarding the Open Meetings Act.*

1. TownCenter contract

- B. **PURSUANT TO §551.072** — *Deliberation regarding the purchase, exchange, lease, or value of real property.*

- C. **PURSUANT TO §551.087** — *(1) Deliberation regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision.*

V. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

VI. ADJOURNMENT

CERTIFICATION

I DO HEREBY CERTIFY THAT THE MARCH 26, 2024 KENNEDALE ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS AGENDA WAS POSTED INSIDE THE MAIN ENTRANCE OF CITY HALL (405 MUNICIPAL DRIVE), IN A PLACE CONVENIENT AND READILY ACCESSIBLE TO THE GENERAL PUBLIC AT ALL TIMES; AND THAT SAID AGENDA WAS POSTED AT LEAST SEVENTY-TWO (72) HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING, IN ACCORDANCE WITH CHAPTER 551 OF THE TEXAS GOVERNMENT CODE.


BOARD OR COMMISSION SECRETARY

In compliance with the Americans with Disabilities Act (ADA), the City of Kennedale will provide for reasonable accommodations for persons attending meetings. This facility is wheelchair accessible and accessible parking spaces are available. Requests for sign interpreter services must be made forty-eight (48) hours prior to the meeting by calling 817-985-2104 or (TTY) 1-800-735-2989.



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STAFF REPORT
to the Kennedale Economic Development Corporation Board of Directors

MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: WORK SESSION ITEM II.A.

SUBJECT
WORK SESSION REPORTS

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS



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STAFF REPORT **to the Kennedale Economic Development Corporation Board of Directors**

MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: WORK SESSION ITEM II.A.1.

SUBJECT

Chamber of Commerce construction

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS



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STAFF REPORT
to the Kennedale Economic Development Corporation Board of Directors

MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: WORK SESSION ITEM II.A.2.

SUBJECT

Point-of-sale contractor presentation

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS



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STAFF REPORT
to the Kennedale Economic Development Corporation Board of Directors

MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: WORK SESSION ITEM II.A.3.

SUBJECT

Kennedale TownCenter update

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS



MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: WORK SESSION ITEM II.B.

SUBJECT

DISCUSSION AND/OR REQUESTS FOR CLARIFICATION OF ITEMS LISTED ON THE AGENDA

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS



MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: REPORTS AND ANNOUNCEMENTS ITEM III.A.

SUBJECT

REPORTS AND ANNOUNCEMENTS

In addition to any items below, the Kennedale Economic Development Corporation Board of Directors, the presiding officer, and/or staff may give or receive reports regarding items of community interest, including, but not limited to, recognition of officials, citizens, staff, or departments; information regarding holiday schedules; and upcoming or attended events.

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS



MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: REPORTS AND ANNOUNCEMENTS ITEM III.A.1.

SUBJECT

Financial reports for the EDC

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

1.	05 February EDC	05 February EDC .pdf
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**KENNEDALE
ECONOMIC DEVELOPMENT CORPORATION
MONTHLY FINANCIAL REPORT
Month Ended February 29, 2024
EXECUTIVE OVERVIEW**

TO Members of the Economic Development Corporation
Darrell Hull, Executive Director

FROM Jon Horton, Treasurer

DATE March 26, 2024

SUBJECT Monthly Financial Report for February 2024

Below is an overview of the monthly financial results for the current fiscal year through February. Detail schedules for each fund are attached for your review.

Results through February represent 41.7% of the fiscal year.

EDC FUND (15)

- ◇ Sales tax revenues received year-to-date \$177,488; 28.9% of total budget; receipts from the State are two months delayed; i.e. October sales taxes are received in December; November in January, etc.
- ◇ Prior year Sales Tax receipts through February were \$172,073; 28.1% of collections for the year.
- ◇ Rental fees for the Shopping Center year-to-date \$138,686; 44.6% of total budget
- ◇ EDC Operations expenditures year-to-date \$402,501; 56.3% of total budget; includes \$20,264 for annual Christmas event
- ◇ EDC Town Shopping Center expenditures year-to-date \$56,870; 17% of total budget
- ◇ Fund Balance year-to-date is \$2,1129,096; 546 days of total budgeted expenditures and transfers out; budgeted Fund Balance at year-end is 463 days

KENNEDALE EDC MONTHLY FINANCIAL REPORT
Month Ended February 29, 2024

EDC FUNDS									
Fund / Description	PRIOR YEAR FY2023				CURRENT YEAR FY2024				
	Actual for Year (unaudited)	Current Month	Year To Date	% Received/ Expended YTD	Approved Budget	Current Month	Year To Date	% Received/ Expended YTD	Remaining Budget
EDC Fund (15)									
EDC Fund Revenues	\$ 1,121,315	\$ 93,447	\$ 328,996	29.3%	\$ 1,093,807	\$ 111,486	\$ 656,246	60.0%	\$ 437,561
EDC Fund Expenditures									
Operations Expenditures	555,407	13,930	135,944	24.5%	714,406	38,701	402,501	56.3%	311,905
Debt Service Expenditures	306,463	-	35,991	11.7%	309,200	138,893	177,895	57.5%	131,305
Town Shopping Center Expenditures	73,091	2,512	36,457	49.9%	338,461	2,773	56,870	16.8%	281,591
Total EDC Fund Expenditures	934,961	16,441	208,392	22.3%	1,362,067	180,367	637,267	46.8%	724,800
Revenues Over (Under) Expenditures	186,354	77,006	120,604		(268,260)	(68,882)	18,979		
Transfers (Out)	(56,124)	-	-	0.0%	(61,520)	(5,127)	(25,633)	41.7%	(35,887)
Net Change in Fund Balance	130,230	77,006	120,604		(329,780)	(74,008)	(6,654)		
Beginning Fund Balance - Decober 1	2,005,520		2,005,520		2,135,750		2,135,750		
Ending Fund Balance - <i>year-to-date</i>	<u>\$ 2,135,750</u>		<u>\$ 2,126,124</u>		<u>\$ 1,805,970</u>		<u>\$ 2,129,096</u>		
Average Daily Annual Expenditures	\$ 2,715				\$ 3,900				
Days of Fund Balance	787		783		463		546		
EDC Bond Reserve Fund (95)									
EDC Bond Reserve Fund Revenues	\$ 4,350	\$ 171	\$ 958	22.0%	\$ 2,800	\$ 288	\$ 2,415	86.3%	\$ 385
EDC Bond Reserve Fund Expenditures	0	-	-	0.0%	0	-	-	0.0%	0
Revenues Over (Under) Expenditures	4,350	171	958		2,800	288	2,415		
Beginning Fund Balance - Decober 1	126,575		126,575		130,925		130,925		
Ending Fund Balance - <i>year-to-date</i>	<u>\$ 130,925</u>		<u>\$ 127,533</u>		<u>\$ 133,725</u>		<u>\$ 133,340</u>		



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STAFF REPORT **to the Kennedale Economic Development Corporation Board of Directors**

MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: REGULAR SESSION ITEM III.B.

SUBJECT
CONSENT AGENDA

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS



MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: CONSENT AGENDA ITEM III.B.1.

SUBJECT

Approval of the minutes from the February 27, 2024 Regular Meeting

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

1.	Minutes unsigned 02.27.2024	Minutes unsigned 02.27.2024.doc
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KENNEDALE ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS MINUTES

REGULAR MEETING | FEBRUARY 27, 2024 AT 6:00 PM
CITY HALL COUNCIL CHAMBERS | 405 MUNICIPAL DRIVE, KENNEDALE, TX 76060

I. CALL TO ORDER

President Mark Yeary called the meeting to order at 6:01 p.m.

A. ROLL CALL

PRESENT: Tyson Eubanks, Marcel Terry, Bryant Griffith, Kenneth Michels, David Glover;

ABSENT: Jerod Reeves;

***STAFF:** Executive Director Darrell Hull, Board Secretary Ross Sanchez, Treasurer Jonathan Horton,
Communications and Library Director Elizabeth Partridge, Library Programming and Event Coordinator Sara Hooser*

II. WORK SESSION

A. WORK SESSION REPORTS

1. Veteran's Memorial presentation

Councilmember Bryant Griffith invited two representatives from MMA in Arlington to give an update on the Veteran's Memorial project in TownCenter Plaza.

2. Discussion on bids for Chamber of Commerce building renovations

Executive Director Darrell Hull updated the EDC board on the three quotes that have been received for the Chamber of Commerce building renovation.

3. Grant opportunities for point-of-sale

EDC board member Tyson Eubanks expressed his interest in involving our local small businesses with a grant opportunity to have modernized point-of-sale systems. There was discussion on the next steps in this potential process.

4. Discussion on Farmer's Market

Communications and Library Director Elizabeth Partridge and Library Programming and Event Coordinator Sara Hooser gave the EDC board updates on the upcoming Farmer's Market and other city events coming up for Kennedale.

B. DISCUSSION AND/OR REQUESTS FOR CLARIFICATION OF ITEMS LISTED ON THE AGENDA

III. REGULAR SESSION

A. REPORTS AND ANNOUNCEMENTS

In addition to any items below, the Kennedale Economic Development Corporation Board of Directors, the presiding officer, and/or staff may give or receive reports regarding items of community interest, including, but not limited to, recognition of officials, citizens, staff, or departments; information regarding holiday schedules; and upcoming or attended events.

1. Financial reports for the EDC

Treasurer Jonathan Horton gave an update on the financial reports for the EDC.

Motion: Approve

Action: Financial reports for the EDC

Moved By Tyson Eubanks, **Seconded By** Councilmember Bryant Griffith.
Motion passed unanimously

B. CONSENT AGENDA

Motion: Approve

Action: CONSENT AGENDA

Moved By Mayor Pro Tem Kenneth Michels, **Seconded By** Councilmember Bryant Griffith
Motion passed unanimously.

1. Approval of the minutes from the December 18, 2023 Regular Meeting
2. Approval of the minutes from the January 23, 2024 Regular Meeting

IV. EXECUTIVE SESSION

President Mark Yeary recessed to Executive Session at 7:26 p.m.

A. **PURSUANT TO §551.071** — *Consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion of any item posted on the agenda, legal issues regarding the Open Meetings Act.*

1. TownCenter Plaza development agreement

B. **PURSUANT TO §551.072** — *Deliberation regarding the purchase, exchange, lease, or value of real property.*

C. **PURSUANT TO §551.087** — *(1) Deliberation regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision.*

V. RECONVENE INTO OPEN SESSION, AND TAKE ACTION NECESSARY PURSUANT TO EXECUTIVE SESSION, IF NEEDED

President Mark Yeary reconvened the meeting at 7:57 p.m.

No action was taken.

VI. ADJOURNMENT

President Mark Yeary adjourned the meeting at 7:57 p.m.

APPROVED:

ATTEST:

PRESIDING OFFICER

BOARD OR COMMISSION SECRETARY



MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: REGULAR SESSION ITEM III.C.

SUBJECT
ITEMS FOR INDIVIDUAL CONSIDERATION

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: INDIVIDUAL CONSIDERATION ITEM III.C.1.

SUBJECT

Consider approval of the MMA proposal for professional services for the TownCenter Park Master Plan

ORIGINATED BY

SUMMARY

RECOMMENDATION

ATTACHMENTS

1.	3808-00-00_Kennedale Town Center Master Plan_Proposal_2023-12-15	3808-00-00_Kennedale Town Center Master Plan_Proposal_2023-12-15.pdf
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519 E. Border Street
Arlington, Texas ,76010
O: 817-469-1671
Fx: 817-274-8757



December 15, 2023

City of Kennedale
Mr. Bryant Griffith
405 Municipal Drive
Kennedale, TX 76060
bgriffith@cityofkennedale.com
682-201-7600

Re: PROPOSAL FOR PROFESSIONAL SERVICES TOWN CENTER PARK-MASTER PLAN

PROPOSAL

Dear Mr. Griffith,

mma, inc. (MMA) is pleased to present the City of Kennedale (CLIENT) this proposal for professional consulting services for the proposed master plan for Town Center Park in the City of Kennedale, Texas (PROPERTY). MMA understands the existing fountain located within Town Center Park is no longer operational and there are ambitions to include a memorial to Veterans. Based on the initial meeting with CLIENT, a broader view of the existing Town Center Park should be realized, and a fundraising effort would be needed to achieve planned/future improvements to the park.

MMA understands a site survey of the project area is ongoing. This survey will be utilized in developing the park master plan deliverables. MMA will provide planning services. Refer to Exhibit A for project limits. We appreciate the opportunity to work with you on this project.

SCOPE OF SERVICES

I. PLANNING SERVICES:

- A. Programming & Initial Stakeholder Meeting
MMA will meet with city staff members and other defined stakeholders to begin discussions for the vision for Town Center Park. Information received from the initial stakeholder meeting will be used to develop the preliminary park master plan. The initial stakeholder meeting would be limited to a maximum of 2 hours.
- B. Stakeholder Meetings
MMA will attend up to two (2) stakeholder meetings to discuss the proposed master plan. Meetings would be limited to a maximum of 2 hours each. It is understood the city would coordinate meetings and define who would be in attendance. MMA anticipates meetings would be held at 50% and 90% phases of the project. MMA will document feedback received from the stakeholders during each phase and revise the preliminary master plan with the subsequent phase. Refer to scope below.

- C. Preliminary Park Master Plans (50% & 90% Development)
MMA services will include the layout of the master plan for the property based on defined programming, professional recommendations by MMA, thematic imagery for the development, and feedback received from the stakeholder meetings. MMA will provide 50% and 90% deliverables of the master plan.
- D. Final Master Plan & Site Rendering (100%)
MMA will develop the final master plan (100%) based on feedback received from the 90% stakeholder meeting. Deliverables will include the following:
- Overall Colored Site Rendering
 - Thematic Imagery Board
- E. Graphic Visualization Package (**optional**)
MMA will provide a detailed site modeling of the final master plan. The detailed modeling will be of marketing quality detail depicting material types, landscape, hardscape, signage, articulation and entourage (e.g. open space, people and vehicles, etc.). Below is an expected list of deliverables:
- Detailed 3-D Imagery

COMPENSATION

A. Payment Terms

CLIENT will pay MMA the lump sum fee or their 2023 Hourly rates (Hourly) for the services listed below. Any changes to the site plan will incur additional fees at the 2023 hourly rates, refer to Schedule A for hourly rates.

I. PLANNING SERVICES:

A. Programming & Initial Stakeholder Meeting	\$1,500 Lump Sum
B. Stakeholder Meetings	\$2,500 Lump Sum
C. Preliminary Park Master Plans (50% & 90%)	\$9,500 Lump Sum
D. Final Park Master Plan & Site Rendering	\$3,500 Lump Sum
E. Graphic Visualization Package (optional)	\$7,500 Lump Sum

Total

\$ 17,000 Lump Sum
(Optional) \$ 7,500 Lump Sum

Monthly invoices will be issued by MMA. Payment is due upon receipt of the invoice. Interest will be charged on all accounts over 30 days and accounts over 60 days will result in MMA stopping work on the project until all outstanding invoices are paid. See "Payment to MMA" in the attached PROVISIONS for complete payment terms.



Schedule A

2023 Hourly Rate Schedule

Zoning Consultant	\$ 250
Principal	\$ 200
Director	\$ 190
Senior Project Manager	\$ 175
Senior Land Surveyor	\$ 175
Project Manager	\$ 150
Project Surveyor	\$ 135
Project Engineer	\$ 145
Project Coordinator	\$ 125
GIS Manager	\$ 125
Engineering Production Manager	\$ 145
Landscape Architect	\$ 125
Graduate Engineer 2	\$ 130
Surveyor in Training	\$ 120
Urban Planner	\$ 100
GIS Analyst	\$ 100
Graduate Engineer 1	\$ 115
Designer	\$ 110
Landscape Designer	\$ 115
Technician 3	\$ 115
Technician 2	\$ 95
Technician 1	\$ 85
Survey Field Party (3-Man)	\$ 250
Survey Field Party (2-Man)	\$ 175
Survey Field Party (1-Man)	\$ 125
Project Assistant	\$ 75
Clerical	\$ 50

MMA 2023 Reimbursable Expenses Schedule

Expenses incurred by MMA required to complete the project will be reimbursed to MMA by the Owner. Plots, blacklines, copies and mileage will be reimbursed at the following rates:

Plotting

Bond	\$ 1.50 per sheet
Color	\$10.00 per sheet
Mylar	\$12.00 per sheet

Blacklines	\$ 1.50 per sheet
Xerox Copies	\$ 0.15 per side copy
Mileage	\$ 0.58 per mile

Other direct expenses are reimbursed at cost plus 10%. These services may include but are not limited to: platting and filing fees, taxes, outside reprographic expense, deliveries, postage, travel, meals and photographic services.



B. Additional Services

Any requested services not included in this agreement, including but not limited to the Exclusions stated in this proposal, will be performed and billed at a cost determined upon the time of the request. Additional services will not begin until written authorization from the CLIENT has been received.

The following are a list of items not included in our scope of services but may need to be addressed at some point in the approval process:

- All negotiations and coordination with adjoining property owners.
- Flood studies and FEMA processing.
- Franchise utility coordination.
- Structural design of retaining walls.
- Traffic Impact Analysis of this site.
- Geotechnical Report.
- Environmental Assessment Report.
- Signage design and permitting.
- Site lighting layout and/or design.
- Fountain design or other water feature design.
- Waters of the U.S. and wetland determination and permitting.
- Offsite utility design.
- Separate instrument easements.
- Architect/GC will apply for the building permit.
- Franchise ROW Permit Exhibits

C. Provisions

CLIENT understands this agreement between the parties for such services for **Town Center Park-Master Plan** as set forth herein, is governed by the PROVISIONS attached to this proposal, the terms of which are an integral part of the agreement and incorporated here by reference.

MMA appreciates the opportunity to submit this proposal and looks forward to working with you on this project. If this proposal meets with your approval, please sign both copies in the approval space and return one for our files. This proposal is valid for 30 days from the date of this proposal.

Sincerely,

MMA, INC.


Name _____

Title: **President**

Date: December 15, 2023

Client hereby requests and authorizes MMA, Inc. (MMA) to perform the services outlined in this proposal.

CLIENT:

By: _____

Name:

Title:

Date: _____

Please check the box to receive invoices via email: ☐

Preferred email address for invoices: _____

LEGEND

Project Specific

Contours

— Minor

— Major

SITE

Parcels

Transit/Thoroughfare

ROADWAYS



All data shown on this map is that which is currently available from public data. Contours should be verified prior to design.

EXHIBIT A



civil engineering surveying landscape architecture planning

tbpe registration number: f - 2759

tbpls registration/license number: 10088000

519 east border

arlington, texas 76010

817-469-1671

fax: 817-274-8757

www.mmatexas.com

PROVISIONS

1. Authorization to Proceed

Execution of this AGREEMENT by the CLIENT will be authorization for MYCOSKIE & ASSOCIATES, INC. (MMA) to proceed with the work, unless otherwise specifically provided for in this AGREEMENT. CLIENT represents that CLIENT is the owner of the real property described herein, or is the authorized agent, trustee, or receiver for the owner of the real property described herein.

2. Cost Opinions

MMA has no control over market conditions or bidding procedures, MMA does not warrant that actual bids, construction cost, or Project economics will not vary from any cost opinions or Project economic evaluations provided by MMA.

3. Termination

Either party with or without cause may terminate this AGREEMENT by giving 30 days written notice to the other party. On termination, MMA will be paid for all work performed up to the termination date.

4. Payment to MMA

Payment for invoices for all work performed by MMA for CLIENT is due upon receipt of the invoice. Interest on the unpaid balance as reflected by the invoices or statements to CLIENT, may be charged by MMA at the highest non-usurious rate allowed by law, beginning thirty (30) days after date of invoice. Payments will be credited to interest first and then to the oldest principal balance due. Under no circumstances shall the amount paid, or agreed to be paid, or otherwise contracted for, charged or received by MMA, as interest, exceed the maximum non-usurious amount permissible under applicable State or Federal law. If from any circumstances whatsoever, fulfillment of any provision of this AGREEMENT, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance MMA shall ever receive as interest an amount that would be excessive, such excessive interest shall be applied to the reduction of the principal amount owing and not to the payment of interest, or if such excessive interest exceeds the unpaid balance, such excess shall be refunded.

5. Mechanics Lien

Notwithstanding any other provision of this AGREEMENT, MMA reserves the right to exercise all available lien rights which it may have, either statutory or common law, to enforce payment for its services. CLIENT hereby acknowledges and consents to MMA's right to assert a lien to secure the payment of its invoices against 1) the materials furnished in performance of the services described herein; 2) the plans, drawings, or other work product produced or prepared by MMA in performance of the services described herein; and 3) the real property described herein.

6. No Agency

CLIENT acknowledges that MMA is not an employee

or agent of CLIENT.

7. MMA's Personnel at the Project

The presence or duties of MMA's personnel at the Project site, do not make MMA or its personnel in any way responsible for those duties that belong to CLIENT and/or to contractors, subcontractors, or other entities, and do not relieve the contractors, subcontractors, or other entities of their obligations, duties, and responsibilities, including, but not limited to, all methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work of those parties in accordance with their contract requirements and any health or safety precautions required by such work. MMA and its personnel have no authority to exercise any control over any contractor, subcontractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty to inspect, note, observe, correct, or report on health or safety deficiencies of any contractor, subcontractor, or other entity or any other persons at the Project site and MMA disclaims all such duties. MMA neither guarantees the performance of any contractors, subcontractors or other entities nor assumes responsibility for their failure to perform their work in accordance with their contractual responsibilities.

8. Construction Observation

It is understood and agreed that MMA's basic services under this AGREEMENT do not include construction observation or review of the Contractor's performance. CLIENT acknowledges the Importance of such services and CLIENT will either perform those services or have such services performed by a party other than MMA.

If MMA does not perform full-time construction observation, CLIENT shall, to the fullest extent permitted by law, indemnify and hold MMA harmless from any loss, claim, or costs, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments, or changes made to the Contract Documents, except for claims arising from the sole negligence or willful misconduct of MMA.

9. Litigation Assistance

Unless specifically set forth in the Scope of Services, the Scope of Services does not include costs of MMA for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation or administrative proceedings taken or defended by the CLIENT. All such services requested of MMA by the CLIENT, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as may be mutually agreed, and payment for such services shall be in accordance with Section 4, unless and until there is a finding by a court or arbitrator that MMA's sole negligence caused CLIENT'S damage.

10. Arbitration

Any controversy or claim arising out of or relating to this AGREEMENT or MMA's involvement in the Project, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, or other applicable rules of the American Arbitration Association then in effect and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.. The award rendered by the arbitrators will be final and will not be subject to appeal or modification except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act (9 U.S.C. Sections 10 and 11)

11. Severability and Survival

If any of the provisions contained in the AGREEMENT are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of this AGREEMENT for any cause.

12. Interpretation

The limitations of liability and indemnities will apply whether MMA's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, except for willful misconduct or gross negligence for limitations of liability and sole negligence for indemnification, and shall apply to MMA's officers, directors, employees, affiliated corporation, employees and subcontractors. The law of the state of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. MMA and CLIENT acknowledge that this AGREEMENT is the product of negotiations and agree that it shall not be construed or interpreted more harshly against either party.

13. No Third Party Beneficiaries

This AGREEMENT gives no rights or benefits to anyone other than the CLIENT and MMA and has no third party beneficiaries.

MMA's services are defined solely by this AGREEMENT, and not by any other contract or AGREEMENT that may be associated with the Project.

14. Liability

- a. MMA's services shall be governed by the negligence standard for professional services, measured as of the time those services are performed.
- b. To the maximum extent permitted by law, MMA's liability for CLIENT damages for any cause or combination of causes, will in the aggregate, not exceed the compensation received by MMA under the AGREEMENT.
- c. To the maximum extent permitted by law, the CLIENT will indemnify MMA from all claims, losses, and costs, including

litigation expenses and attorney's fees.

- d. CLIENT waives any right that limits, voids, or makes unenforceable the obligations of CLIENT set forth above. If any such right is deemed or ruled not to be subject to waiver, the parties agree that an amount equal to the obligation of CLIENT set forth above as if enforceable will be paid to MMA by CLIENT as additional compensation for MMA's services.
- e. As used herein, MMA includes the corporation, subcontractors, and any of MMA's officers, directors, or employees.
- f. Any claim for breach of contract, whether asserted by MMA or CLIENT must be brought within 2 years from the day following the act or omission giving rise to the breach of contract claim.
- g. Any claim for negligence or gross negligence by MMA must be brought within 2 years from the date of completion of services under the AGREEMENT by MMA or if MMA does not complete performance within 2 years from the date it last provided services to CLIENT.
- h. MMA specifically excludes any warranties, express or implied, which may arise by statute, common law, or equity, including specifically any warranty of fitness for a particular purpose or merchantability.
- i. This Provision takes precedence over any conflicting Provision of this AGREEMENT or any document.



MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: EXECUTIVE SESSION ITEM IV.A.

SUBJECT

PURSUANT TO §551.071 — Consultation with the City Attorney pertaining to any matter in which the duty of the City Attorney under the Texas Disciplinary Rules of Professional Conduct may conflict with the Open Meetings Act, including discussion of any item posted on the agenda, legal issues regarding the Open Meetings Act.

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SUMMARY

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ATTACHMENTS



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STAFF REPORT **to the Kennedale Economic Development Corporation Board of Directors**

MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: EXECUTIVE SESSION ITEM IV.A.1.

SUBJECT

TownCenter contract

ORIGINATED BY

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MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: EXECUTIVE SESSION ITEM IV.B.

SUBJECT

PURSUANT TO §551.072 — *Deliberation regarding the purchase, exchange, lease, or value of real property.*

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MEETING DATE: MARCH 26, 2024

AGENDA ITEM NUMBER: EXECUTIVE SESSION ITEM IV.C.

SUBJECT

PURSUANT TO §551.087 — (1) *Deliberation regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or (2) to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision.*

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